



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201108041**
Release Date: 2/25/2011

Date: December 1, 2010

Uniform Issue List
501.00-00

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: September 29, 2010

Uniform Issue List
501.00-00

Legend:

<u>Consulting Company</u>	=
<u>For-profit</u>	=
<u>Instructor</u>	=
<u>Treasurer</u>	=
<u>Inclusive Service</u>	=
<u>State</u>	=
<u>Date</u>	=

Dear :

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

Facts

You are an organization that provides foreclosure related services. You were incorporated on Date as a non-profit corporation under State law. Your Articles of Incorporation ("Articles") state that your specific purposes include the following:

- (a) To educate and inform residential homeowners of their options, the procedures and resources available to them in times of financial distress and foreclosure;
- (b) To promote and support the professional development of [your] members; . . . and
- (f) To own, use, buy, sell, mortgage or encumber real and personal property as will tend to promote the objects of this Corporation and the doing of all things necessary or incident to the purposes of this Corporation.

Your bylaws provide that you are organized to:

- (a) [S]erve as a consumer educational and information resource in matters related to residential home foreclosures;
- (b) Provide and support the professional development of members; and
- (c) [S]upport the career development of graduates and students from Instructor's foreclosure intervention specialist training class].

Your Form 1023 ("application") indicates that you were originally formed by students of a foreclosure intervention specialist training class taught by Instructor, who is the owner of Consulting Company, to provide for the professional development of your members and to assist the general public. You state that you plan to provide services "to concerned citizens in foreclosure crisis, non-profit organizations, financial lending institutions, [and] private and public agencies."

You are a membership organization with 18 members, six of whom are charter members. Five of your six charter members are founding members and on your board of directors. Your bylaws indicate that membership is limited to graduates from Instructor's foreclosure intervention certification class and that exceptions to the criteria for membership shall be made on a case-by-case basis and shall require a quorum affirmative vote from the general membership. You stated that each member must complete training and certification classes in foreclosure intervention. Your bylaws provide that all members pledge to abide by the association's bylaws and a professional code of ethics.

Your members pay annual dues of \$275 and quarterly membership fees of \$20, set by your bylaws. You listed the benefits of being a member as: educational training, current information, networking with lenders, the opportunity to participate in projects, and referrals from you. In addition to these benefits, your members provide services to your clients as counselors. During your monthly or more frequent meetings, your members receive contacts for networking with lenders, U.S. Department of Housing and Urban Development (HUD) counseling agencies, and local officials. Members are paid \$25 an hour for up to thirty hours for their participation in "projects," which you did not describe. You have a website and an intranet for members to exchange and share information. You stated that you provide your members with leads from your website and phone lines, and that members are also free to promote themselves and capture their own leads. You stated that "[r]eferrals are given to members in order of their membership date."

You are governed by a board of six directors, five of whom are also founding members (hereinafter referred to as "board"). Several of your officers are involved in real estate related services. Your president owns For-profit, a large real estate brokerage that focuses on sales, loan modification, and foreclosure of residences. All of your other officers are independent realtors, and, in addition, your vice president owns a holding company and serves as a personal representative for mortgage service companies, your treasurer ("Treasurer") owns a property holding company and a general contracting business, and your executive director owns a business that trains individuals in credit repair and assists in finding tenants and buyers.

You provided a draft *Application for Approval as a Housing Counseling Agency* ("Draft HUD Document") that you plan to submit to HUD if your application for exemption is approved. In your Draft HUD Document, you stated that your staff consists of your members, all of whom are listed as volunteers. However, your application also provides that your staff consists of an executive director, an associate director, and five housing counselors. Your application provides that you will treat your staff as independent contractors for the first six months. You have also represented that you plan to pay your staff a salary as employees for two years.

You stated that "[t]o avoid possible private benefit all advertising and service benefits refers to the organization without any reference to any person or business. . . ." In addition, "the homeowner is not under any obligation to use any service recommended by [you] or under any obligation to use any product recommended." You also stated that "[a]ll contact with clients will be reported whether accidental or on purpose," and "[t]hese instances will be reviewed by the full [b]oard and appropriate actions to recue/remove [sic] the offending members to assure no private benefit to board members."

In response to a question regarding whether your members will take your customers as private business customers through your website or referrals, you stated that:

Our website does not provide in any way for board members to gather, solicit or acquire clients. Each contact is monitored and a response is sent back to the client from [you]. If the client is interested in our services they are referred to the appropriate [member] for help.

Governing members cannot take clients as private business customers. All referrals are to Federal, State, and County, City or non-profit organizations. We do not refer to board members or their companies.

However, you did not indicate that your non-governing members are prohibited from taking your customers as private clients. In fact, it appears from your fee structure, described in detail below, that your members pay your board a referral fee to take your customers as private clients.

You stated that your activities include operating a toll-free twenty-four hour telephone crisis hotline ("Hotline"), holding or sponsoring forums ("Public Forums"), offering seminars, and providing mortgage mitigation services and individual counseling. You indicated that your Hotline is available to homeowners who are facing foreclosure or to individuals that have gone through foreclosure. The counselors who monitor the line provide intake assistance, support, and "any necessary referrals," and seek to help homeowners stay in their homes. You also stated the Hotline would help individuals find housing and "[a]ssist persons with understanding their credit readiness for a home."

You hold or sponsor Public Forums to provide education and informational guidelines to non-profit organizations and private and public agencies that assist disadvantaged homeowners at risk of foreclosure. You stated that you intend to work with local churches and non-profit organizations to identify potential clients.

You offer monthly seminars at churches, schools, public libraries, and banks. In the future, you intend to host these seminars at your location. You stated that the seminars are free to

anyone who wants to attend, although your fee structure suggests that you may charge a \$400 fee. You offer three types of seminars: Prevent Foreclosure Seminars ("Foreclosure Seminars"), Free Credit Training Monthly Seminars ("Credit Seminars"), and Getting Ready to Buy a Home Seminars ("Home Buying Seminars"). Your Foreclosure Seminars discuss modification options and encourage homeowners to stay in their home, and are generally held at local churches. On a document titled "Agenda" you indicated that you explain the following: "abandonment clause in mortgage," options lenders may offer, rights homeowners have with "an FHA loan," what lenders require for loss mitigation options, who to contact, and the social services and non-profit organizations available to provide assistance. You partner with local providers of consumer credit counseling services to provide Credit Seminars. Credit Seminars are generally hosted by local banks and provide homeowners with information on how to build and repair their credit. You indicated that local bank representatives, your "agents," HUD counselors, and attorneys give presentations at Credit Seminars. It is unclear whether you are referring to persons on your staff or to your members when you state your "agents" give presentations at your Public Forums. You did not provide any information on your Home Buying Seminars.

You represented that you provide counseling services and mortgage mitigation services to homeowners facing foreclosure, and stated that you will assist anyone who "needs assistance in dealing with banks when facing foreclosure." However, it appears that you accomplish this by referring individuals seeking foreclosure services to your members who charge a fee set by you, rather than engaging in counseling and foreclosure intervention services directly. You indicated that if a member provides services to individuals based on referral given to them by you, they are required to submit to your board a base amount or a percentage (not to exceed 15%) of the fees charged in accordance with the fee schedule you provided. Your proposed income statement projects that you will receive \$360,000 in grants and \$35,500 in membership dues in fiscal year 2009. You did not list any income from referral fees or any income associated with the fees you say you charge for counseling related services.

Your members charge a \$495 fee to clients for "intake," of which \$50 must be remitted to your board, which you describe as a referral fee. Your members charge a \$400 fee to clients for "Homeowner Counseling," of which \$50 must be remitted to your board, again as a referral fee. Indeed, you stated with respect to your fee structure that this "\$50 would be donated back to [you] for the referral fee from the referee." Your members have to remit up to 15% of the amount they charge for certain "other services" to your board. The information you provided indicates that your members' fee structure for "other services" ranges from \$125 for "Broker Price Option" to \$30,000 for Inclusive Service (which you did not explain). You stated that "[i]f low income clients cannot afford the fees grant and donated monies will be used to provide services." However, you did not explain how you would determine whether clients can afford the fees, how services would be provided to low-income clients in the absence of grants and donations, or whether you would pay your members to provide the services for free or at a discount.

You provided a flow chart documenting what occurs when customers call your Hotline, email, or send you mail requesting assistance. After an inquiry is received by one of your "agents," presumably a housing coordinator on staff, the matter is referred to one of your members. Your member then contacts the client to schedule an initial "intake" meeting that usually lasts three to four hours. After the initial intake meeting, your member reviews and analyzes the data before making your recommendation. After your recommendation is made,

the client is either referred to a non-profit organization or the client chooses between a short sale and a "modification, refinance, etc." If the client chooses a short sale, you refer the client to a realtor or member. Thereafter, the client ultimately chooses between one of your members or a realtor that is not a member to list the property, obtain bank approval, and sell the property. If the client chooses "modification, refinance, etc.," you refer the client to a member to negotiate with the mortgage company an offer that is acceptable to the client. You indicated that the member confers with the client to explain the ramifications of documents and how to complete them. Thus, it appears from your flow chart and representations that it is your members, not you, who provide counseling and services to clients. Your role appears to be generally limited to receiving and referring the initial inquiry.

You state that your "Homeowner Counseling" services include informing homeowners about the following options: repayment plan, forbearance plan, loan modification, partial claim, short sale, deed in lieu of foreclosure, reverse mortgage, and sheriff sale. Again, the flow chart you provided suggests that it is your members, not you, who provide such services to clients.

Your Draft HUD Document indicates that "individual [counseling] sessions consist of determining what outcome the homeowner desires, determining their existing financial situation, determining the condition of the home, analyzing their condition compared to financial/community/mortgage standards and planning the best course of action to achieve the homeowners' desire." In your Draft HUD Document you indicated that your counseling includes the following:

Initial interview with client, provide checklist of needed items to client, collect and review all family financials, analyze and develop an appropriate plan of action to move forward, recommend and explain plan to client, receive approval for plan of action, help client execute plan, follow-up with client as necessary.

However, the Draft HUD Document does not indicate which counseling activities are undertaken by you, and which counseling activities are undertaken by your members.

You state that you provide other services, which generally include pursuing the following options on behalf of your clients: forbearance, modification, short sale, or deed-in-lieu of foreclosure. However, the flow chart you provided indicates that it is your members, not you, who pursue these options on behalf of clients. You provided a copy of a short sale document that references the fact that a short sale of the property related to a referenced loan has been approved ("Short Sale Document"). The Short Sale Document provides that "[t]his approval extends only to the sale of the property to Treasurer Living Trust according to terms and conditions stated in purchase contract dated 10/ /20 ."

In response to our request to provide the percentage of your activities in terms of time and money devoted to various activities, you submitted the following figures:

	Percent of Time	Percent of Budget Dollars
Agency Counseling	5%	8%
Seminars for Consumers	15%	15%
Foreclosure mitigation and counseling services	80%	73%
Membership Services	No response	No response

However, your application also provides that 80% of your time will be spent on foreclosure consulting services and 20% of your time will be spent writing grants for "new monies." In any case, it remains unclear what counseling and foreclosure intervention services you provide since, as discussed above, the rest of the record indicates these services are primarily provided by your members as private individuals rather than as your agents or employees.

You indicated in your Draft HUD Document that you serve "those that other agencies can't serve, for example people with incomes well above the median wage for the area and those needing Realty services." The business plan you submitted ("Business Plan") states that you "will be the best professional real estate association in the country dedicated to helping homeowners in jeopardy of foreclosure." The "Market Analysis" section of your Business Plan states that no other counseling agencies in the area provide realtor services and that the realtors you have on staff "are better educated and trained to help homeowners get their property listed." Your Business Plan provides that you have the following three distinct competitive edges that will be leveraged to make you a successful service provider with sufficient financial resources: your "agents" complete Instructor's foreclosure intervention specialist certification class, your members are experienced in handling foreclosure issues impacting real estate transactions, and your members complete 30 hours of continuing education every three years.

You will advertise your services at community events, in print, on the radio, on television, and over your website. You will develop "relationships with other social service providers such as churches, schools, libraries, non profit agencies and HUD approved counseling agencies" because "[t]hese are the 'front line workers' who are in the best position to make referrals to people who are truly in need of the services." You indicated that these relationships will be developed through open houses for staff and by maintaining relationships with individuals who work there. You represented that you will raise funds by holding silent auctions; soliciting tax-exempt organizations, individuals, and for-profit corporations; and applying for grants from HUD and local governments. You will also aid "client recruitment" and "corporate fundraising" by sponsoring one day seminars and other public events that are designed to establish your organization within the community. Your Business Plan indicates that your website will be marketed to all referral social service agencies as well as to prospective corporate and individual donors, and will be used as a resource to provide information to clients, social service agencies that provide referrals, and donors regarding the "empowerment program," facilities, and your members. You failed to explain the details of your "empowerment program."

Your application contains several inconsistencies regarding the space you currently occupy. Your application provides that you "will temporarily, for the period of six months," rent office space from For-profit. Your application provides that "the space estimated at 2500 square feet, rents for \$11.00 per square foot and totals \$2,750 per month," but your president would rent you the space for \$1,500 "for the next six months or until [you] find other office space that [you] can afford." However, your application also provides that you will lease the same office space described above for \$1,000 a month for six months. Your Draft HUD Document indicates that the signing of a lease is contingent on "receiving IRS approval for non-profit status." You provided a letter of intent from For-profit providing that it intends to lease approximately 2,300 square feet of office space to you for \$2,000 a month. The document provides that the lease term is intended to begin on June 1, 2009 and end May 1, 2011. Despite our request, you did not provide a copy of the lease agreement or an independent appraisal indicating the rental value of the facility you are renting.

Law

Section 501(a) of the Code provides that an organization described in section 501(c)(3) shall be exempt from taxation.

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 501(q) of the Code provides that organizations which provide "credit counseling services" as a substantial purpose shall not be exempt from taxation under section 501(a) unless they are described in sections 501(c)(3) or 501(c)(4) and they are organized and operated in accordance with the following requirements:

(A) The organization--

- (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
- (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
- (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
- (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

(C) The organization establishes and implements a fee policy which--

- (i) requires that any fees charged to a consumer for services are reasonable,
- (ii) allows for the waiver of fees if the consumer is unable to pay, and
- (iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(D) At all times the organization has a board of directors or other governing body--

(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

....

(F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

Section 501(q)(2)(A)(i) of the Code provides that if an organization is described in section 501(c)(3) and is providing credit counseling services as a substantial purpose, it may be exempted from tax only if it does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

Section 501(q)(2)(A)(ii) of the Code provides that if an organization is described in section 501(c)(3) and is providing credit counseling services as a substantial purpose, it may be exempted from tax only if its aggregate revenues from payments by creditors of consumers of the organization attributable to debt management plan services do not exceed a specified percentage of total revenues.

Section 501(q)(4)(A) of the Code defines, for purposes of section 501(q), the term "credit counseling services" to mean (i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (ii) the assisting of individuals and families with financial problems by providing them with counseling; or (iii) a combination of the activities described above.

Section 501(q)(4)(B) of the Code defines, for purposes of section 501(q), the term "debt management plan services" to mean services related to the repayment, consolidation, or restructuring of a consumer's debt, and to include the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing or processing of debt management plans.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the regulations provides that the term "exempt purpose or purposes" as it is used in section 1.501(c)(3)-1 of the regulations means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 61-170, 1961-2 C.B. 112, an association composed of professional private duty nurses supported and operated a nurses' registry to help make the nurses' services more readily available to the general public. The association's bylaws stated that its specific purposes were to provide employment for its members as well as to organize an adequate and available nursing placement service for the community. Its membership was open to both registered and practical nurses who met specified requirements. The organization maintained a registry of its members showing their respective qualifications and the types of services they

perform. Reference and placement from the register were made on a rotating basis upon request for nursing services. The association was operated primarily to afford greater employment opportunities for its members, and only incidentally for the benefit of the general public. This was evidenced by the fact that it drew its support primarily from members and was controlled by a board of trustees composed of professional nurses, without public participation of any kind. Thus, the association was not organized or operated exclusively for exempt purposes as described in section 501(c)(3) of the Code.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support. Creditors were not required, though, to make such contributions as a condition of participation.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (individual and group counseling of widows, where fees charged for services were based on ability of the widow to pay); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 178 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (personal marriage counseling and public seminars supported by area churches, clients' fees, and contributions); Rev. Rul. 68-71, 1968-1 C.B. 249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free or below-cost, and the organizations were supported by contributions from the public.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, while to some extent the fees charged reflected ability to pay, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

The Consumer Credit Counseling Service of Alabama was an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship.

The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. As such, the community and education counseling assistance programs were the agencies' primary activities. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way. An incidental amount of their revenue was from service fees. Thus, the court concluded that "each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization." See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In People of God Community v. Commissioner, 75 T.C. 127 (1980), the court found that part of an organization's net earnings inured to the benefit of private individuals because their compensation was based on a percentage of the organization's gross receipts with no upper limit. The court held that the petitioner was not exempt as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

In Kentucky Bar Foundation v. Commissioner, 78 T.C. 921 (1982), the Tax Court considered whether the operation of a lawyer referral service by the Kentucky Bar Association, an integrated bar, was a charitable activity within the meaning of section 501(c)(3) of the Code. The referral service allowed anyone seeking a lawyer to call a toll-free telephone hotline. In finding that the referral service served a genuinely charitable purpose, the court noted the following: the service was open to all responsible attorneys, and there was no evidence that select attorneys were the primary beneficiaries of the service; the service was intended to benefit the public and not to serve as a source of referrals; and any nonexempt purpose served by the referral service and any occasional economic benefit flowing to individual attorneys through a referral was incidental to the broad charitable purpose served.

In Easter House v. United States, 12 Cl. Ct. 476 (1987), *aff'd*, 846 F. 2d 78 (Fed. Cir. 1988) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court found that the health-related services were merely incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3).

American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), concerned a school that trained individuals for careers as political campaign professionals. The court held that the organization did not exclusively serve purposes described in section 501(c)(3) of the Code because it operated on a partisan basis, thereby serving private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with a particular political party and that most of the organization's graduates worked in campaigns for that party's candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting the party's candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferring of benefits on disinterested persons who are not members of a charitable class may serve a private interest within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the U.S. Court of Appeals for the Seventh Circuit upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a nonexempt commercial purpose, rather than for an exempt purpose. As the court stated:

Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations.

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not exempt under section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling debt management plans ("DMPs"). The founder and his spouse were the only members of the organization's board of directors. The organization did not have any meaningful educational program or materials to provide to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

The Court held that the organization's purposes were not educational because its "activities are primarily structured to market, determine eligibility for, and enroll individuals in DMPs." Its purposes are not to inform consumers "about understanding the cause of, and devising personal solutions to, consumers' financial problems," or "to consider the particular knowledge of individual callers about managing their personal finances." The Tax Court also held that the organization's purposes were not charitable because "[its] potential customers are not members of a [charitable] class that are benefited in a 'non-select manner' * * * because they will be turned away unless they meet the criteria of the participating creditors."

The Tax Court further held the organization would operate for the private interests of its founder because the founder and his spouse were the only directors, the founder was the only officer and employee, and his compensation was based in part on the organization's DMP sales activity levels. The organization was "a family-controlled business that he personally would run for financial gain, using his past professional experience marketing DMPs and managing a DMP call center." The Court further held that the organization's principal activity of providing DMP services, which were only provided if approved by a caller's creditors, furthered the benefit of the private interests of creditors as well.

Finally, the Tax Court held that the facts in Credit Counseling Services of Alabama v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978) "stand in stark contrast" because "the sale of DMPs is the primary reason for [Solution Plus's] existence, and its charitable and educational purposes are, at best, minimal."

Analysis

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Section 1.501(c)(3)-1(a)(1) of the regulations. You fail both tests.

Organizational Test

To demonstrate that it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose clause. Section 1.501(c)(3)-1(b)(1)(i) of the regulations. A valid purpose clause limits the organization's purposes to one or more exempt purposes and does not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes. Section 1.501(c)(3)-1(b)(1)(i) of the regulations.

Your Articles do not limit your purposes to one or more exempt purposes. Specifically, promoting and supporting the professional development of your members is not an exempt purpose. See Rev. Rul. 61-170. Therefore, you do not have a valid purpose clause. Accordingly, you are not organized for exempt purposes.

Operational Test

To satisfy the 501(c)(3) operational test, an organization must establish that it is operated exclusively for one or more exempt purposes. Section 1.501(c)(3)-1(c)(1) of the regulations. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. Section 1.501(c)(3)-1(c)(1) of the regulations. Under the operational test, the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a section 501(c)(3) organization. B.S.W. Group, 70 T.C. 352, 356-57 (1978). Your activities are not directed exclusively toward one or more exempt purposes. Though your Hotline, Public Forums, and seminars offer free information to the public on foreclosure mitigation and, as such, in part further educational and charitable purposes, your activities primarily further a substantial nonexempt purpose of selling financial and real estate brokerage services to the public for a fee.

You Are Not Operated Exclusively for Educational Purposes

Your activities demonstrate that you do not operate exclusively for educational purposes within the meaning of section 501(c)(3) of the Code. Though your Hotline, Public Forums, and seminars offer some information to the public, the primary purpose of your Hotline, Public Forums, and seminars is to attract and refer clients to your members and aid your fundraising efforts. This is evidenced by your statements that your interactions with non-profit organizations would help identify potential clients and that you will aid "client recruitment" and "corporate fundraising" by sponsoring one day seminars and other public events. Furthermore, you did not describe or submit the training or information provided at your Public Forums and you did not provide any information on your Home Buying Seminars. The information you did provide indicates that these activities serve primarily a promotional purpose, in that the information you

deliver focuses on the services you offer and how to build and repair credit. For example, the "Agenda" for your Foreclosure Seminars demonstrates that you use these seminars to discuss the services you offer clients to avoid foreclosure and the information clients must provide to you or the lender. With respect to your Hotline, it appears the counselors you have on staff merely provide administrative services, such as intake and member referrals, to homeowners who are at risk of losing their home to foreclosure. Accordingly, the Hotline, Public Forums, and seminars primarily serve a promotional purpose rather than an educational purpose.

You represent that approximately 80% of your time is devoted to providing counseling services and other mortgage mitigation services to homeowners facing foreclosure for a fee. However, the record indicates that it is primarily your members in their private capacity who provide these counseling and foreclosure intervention services for a fee, not you. This is evidenced by the fact that your fee structure states that you receive a referral fee in the amount of \$50 for the intake and homeowner counseling services your members provide to Hotline callers, and a referral fee of up to 15% for the other foreclosure intervention services your members provide. Additionally, in none of your financials do you indicate an expectation of receiving any money associated with these counseling activities. You provided no evidence that you intend to establish long-term counseling relationships with your clients; rather, the flow chart you submitted indicates that after the initial inquiry you refer the clients to your members for follow-up and the provision of services. Like the organization in Solution Plus, T.C. Memo. 2008-21, you did not provide evidence that you help clients develop an understanding of the cause of their financial problems or a plan to address their financial problems.

Even if the counseling and other foreclosure intervention activities undertaken by your members may be attributed to your organization, you did not specify how much of this time is spent on counseling or how much time is spent on other financial services such as executing a short sale or refinancing the client's mortgage. Moreover, your methodology distinguishes you from the exempt organizations in Consumer Credit Counseling Service of Alabama, 78-2 U.S.T.C. 9660 (D.D.C. 1978), and Rev. Rul. 69-441, *supra*. These exempt financial counseling organizations primarily informed the public on budgeting, buying practices, and the sound use of consumer credit. Any debt management programs were incidental to these primary educational activities. Your individual counseling sessions, however, consist of "determining what outcome the homeowner desires, determining their existing financial situation, determining the condition of the home, analyzing their condition compared to financial/community/mortgage standards and planning the best course of action to achieve the homeowners' desire." Unlike financial counseling that has been recognized as exempt, your counseling sessions are not structured primarily to improve your clients' understanding of their financial problems or their skills in solving them. Rather, they are structured primarily to inform your clients about the foreclosure intervention services your members offer. These activities, then, are not primarily offered to provide instruction or training "useful to the individual and beneficial to the community" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations.

Thus, you have not demonstrated that you are operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code.

You Are Not Operated Exclusively for Charitable Purposes

Your activities demonstrate that you do not operate exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. Though you offer seminars that are free to

anyone who wants to attend and operate a toll-free Hotline, as discussed above, the primary purpose of your seminars and Hotline is to attract and refer clients to your members for a fee and aid your fundraising efforts. Offering seminars and operating a Hotline to financially benefit your members and board does not demonstrate a charitable purpose. Accordingly, you failed to establish that your Hotline and seminars primarily serve a charitable purpose.

Moreover, you stated that you serve people in need of foreclosure consulting services, including "people with incomes well above the median wage for the area and those needing [r]ealty services." Helping people with incomes well above the median wage for the area and people needing realty services does not provide relief to the poor and distressed within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations or serve any other purpose recognized as charitable. Accordingly, you are unlike the organization described in Rev. Rul. 69-441, *supra*, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

With respect to the counseling and foreclosure intervention services offered by your members, you stated that "[i]f low income clients cannot afford the fees grant and donated monies will be used to provide services." However you did not indicate how you would determine who can afford the fees or whether services will be provided to low-income clients in the event you did not receive grants or donations. You also did not mention whether your members would have to provide services at a discount or whether you would pay your members for providing the services at a discount. Unlike the organizations in Consumer Credit Counseling Service of Alabama, 78-2 U.S.T.C. 9660 (D.D.C. 1978), and Rev. Rul. 69-441, *supra*, your members charge fees for the majority of the services provided. "[P]rimarily providing services for a fee ordinarily does not further charitable purposes." Solution Plus, T.C. Memo. 2008-21, 22. Thus, even if the services offered by your members are attributable to you, you have not demonstrated that the provision of these services exclusively furthers charitable purposes within the meaning of section 501(c)(3) of the Code.

You Have a Substantial Nonexempt Purpose

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization does not qualify for exemption if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. A nonexempt purpose may be evidenced by activities that are conducted in a commercial manner or for a commercial purpose. Indeed, in discerning whether an organization has a substantial nonexempt commercial purpose, courts focus on a number of factors related to the nature of the activities and how an organization conducts its business, including pricing policies, funding sources, and the organization's competitiveness with and similarity to other commercial ventures. See e.g., B.S.W. Group, 70 T.C. 352 (1978); Easter House, 12 Cl. Ct. 476 (1987); Airlie Foundation, 283 F. Supp. 2d 58 (D.D.C. 2003); Living Faith, 950 F.2d 365 (7th Cir. 1991). A substantial part of your activities consists of generating referrals for your members and board to provide foreclosure intervention services and other financial and real estate brokerage services to individuals for a fee, and thus serve a substantial nonexempt commercial purpose.

Similar to the organization in Solution Plus, T.C. Memo. 2008-21, your primary purpose is to benefit private interests through the promotion and delivery of financial and other services to individuals for a fee, which you accomplish by advertising your services, offering promotional events, and providing your members with referrals from your Hotline and website as well as

other employment opportunities referred to as "projects." Accordingly, your main role is that of a conduit linking members with clients who call your Hotline or visit your website to express an interest in receiving foreclosure intervention services. Like the organization in Rev. Rul. 61-170, *supra*, you are operated primarily as a consulting referral service for the benefit of your members and board. In fact, your consulting referral service is only open to individuals who have attended classes offered by Consulting Company, and your stated purpose of furthering the professional development of your members supports a conclusion that your members and board are the primary beneficiaries of your referral service. Operating a consulting referral service or real estate brokerage firm is not an exempt purpose under section 501(c)(3) of the Code, but rather a nonexempt commercial purpose. Thus, you are unlike the organization in Kentucky Bar Foundation, 78 T.C. 921 (1982), in that your referral service does not serve a charitable purpose and your members are the primary beneficiaries of your activities, rather than the public.

Your finance and compensation structure further demonstrates that you operate for a substantial nonexempt commercial purpose. The exempt organization described in Consumer Credit Counseling Service of Alabama, 78-2 U.S.T.C. 9660 (D.D.C. 1978), received support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. While you indicated that you will fundraise and solicit government grants, you have not received any government grants and there is no evidence that you have received contributions or gifts from disinterested members of the public. See B.S.W. Group, 70 T.C. 352 (citing lack of solicitation of contributions and sole support from fees as factors disfavoring exemption). Similar to the practice in real estate brokerage firms and other commercial referral agencies, and unlike the facts of Kentucky Bar Foundation, 78 T.C. 921 (1982), where only a nominal annual fee was charged to defray the costs of the service, your members have to pay a referral fee to the individuals who founded the organization (i.e., your board). As such, the compensation structure you adopted demonstrates that you are focused on the nonexempt purpose of generating referrals and income for your members and board.

You conduct many of your activities, which are normally carried on by commercial enterprises for a profit, in the same commercial manner and in direct competition with commercial businesses, like the organizations in Easter House, 12 Cl. Ct. 476 (1987), Airlie Foundation, 283 F. Supp. 2d 58 (D.D.C. 2003), and Living Faith, 950 F.2d 365 (7th Cir. 1991). In fact, in your draft HUD application, you described yourself as a "professional real estate association" with experienced "realtors" on staff. You rent office space from a commercial enterprise that provides several of the same services you provide and many of your members, including those who are on your board, own commercial businesses that provide similar services. Most importantly, the consulting referral services you provide are in direct competition with commercial referral agencies and real estate brokerage firms. In addition, the foreclosure intervention services your members provide, and which you represent as your own activities, are in direct competition with banks and other commercial firms that provide these services. You failed to establish that the fees between \$125 and \$30,000 charged to provide foreclosure intervention services and other financial and real estate brokerage services entitle your clients to any educational programs or services beyond those that are offered by commercial firms. Furthermore, you have not established that your members provide these services on different terms, at prices significantly below market, or in any other way that deviates from normal commercial practice. Accordingly, your activities, as well as the activities performed by your members, evidence a substantial nonexempt commercial purpose.

The activities you identify as educational and charitable are merely incidental to your business of providing consulting services for a fee and referrals to your members. Thus, more than an insubstantial part of your activities are in furtherance of a nonexempt purpose, in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. Therefore, you are not operated for an exempt purpose.

Inurement

An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 501(c)(3) of the Code; Section 1.501(c)(3)-1(c)(2) of the regulations.

Your net earnings inure to the benefit of your directors. You stated that your members have to remit 15% of the amount they charge for certain "other services" to your board. These fees are paid to the directors individually, not to you. Your budget did not include any revenue from referral fees. This profit-sharing arrangement effectively gives your directors an ownership interest. The amount they receive is based on how successful you are at attracting clients and how successful your members are at selling services. The amounts have not been negotiated at arm's length, nor are they based on objective factors or an independent appraisal. In addition, there is no upper limit on the amount of your directors' compensation. Compensation based on a percentage of revenues with no limit has been held to be inurement. People of God Community, 75 T.C. 127 (1980). The fact that your profits are paid out in the form of a profit percentage directly to your board rather than dividends from your net earnings does not change the substance of the arrangement.

Your net earnings may also inure to the benefit of your president as the owner of For-profit. You rent office space from For-profit. As discussed above, your application contains several inconsistencies with regards to how much you are paying to rent this space. You stated that you would lease the office space for \$1,000 a month for six months, but you also stated that you would rent the space for \$1,500 and the letter of intent you provided from For-profit provides that it intends to lease you office space for \$2,000 a month. Despite our request, you did not provide a copy of the lease agreement or an independent appraisal indicating the current rental value of the space you are renting. Accordingly, you failed to establish that you do not confer a direct benefit on your president through this lease.

Your earnings inure to your board, and may inure to your president as owner of For-profit. Therefore, you are not described in section 501(c)(3) of the Code.

Private Benefit

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Your operations substantially benefit your members in several ways. As stated in your Articles and bylaws, one of your purposes is to support the professional development of your members (i.e., a limited group of individuals who have completed Instructor's training class and certification class). First, you provide customers to your members through a referral service. Second, you provide other employment opportunities to your members through special projects.

Third, you provide your members with educational training. Fourth, you provide your members with networking opportunities. In addition, you have not adopted a conflict of interest policy that prevents your members from providing other realtor services to your clients or taking your clients as their own customers. Moreover, the fact that you are controlled by a board of directors composed of real estate professionals, without public participation of any kind, further indicates that you are operated for the benefit of your members rather than the public, as in Rev. Rul. 61-170. Thus, you benefit, by more than an insubstantial amount, the private interests of your members.

Similarly, your operations substantially benefit your directors. Your board of directors is composed entirely of persons who stand to gain financially from your organization's activities, unlike the organization in Rev. Rul. 69-441, whose board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions. In Solution Plus, T.C. Memo 2008-21, the Tax Court found that an organization operated for private rather than public benefit when its directors, like yours, personally gained from the organization's activities in the form of compensation based on sales levels of financial services.

Moreover, you stated that, as a way to avoid private benefit, your "[g]overning members cannot take clients as private business customers. . . . We do not refer to board members or their companies." However, the Short Sale Document you submitted indicates that Treasurer, through his living trust, purchased at least one real property from your client.

Your operations also substantially benefit Instructor. You provide employment opportunities for individuals who have completed a specific foreclosure intervention specialist class that is offered by Consulting Company, which is owned by Instructor. This arrangement incentivizes individuals who wish to receive employment opportunities from you to pay Consulting Company to take the necessary classes. Your bylaws indicate that "[m]embership shall be limited to graduates from [Instructor's foreclosure intervention specialist class]" and "exceptions to the criteria for membership shall be made on a case-by-case basis and shall require a quorum affirmative vote from the general membership." However, you provided no information that you have accepted as a member any individual who did not complete Instructor's foreclosure intervention specialist class. Like the organization in American Campaign Academy, 92 T.C. 1053 (1989), you are operated to benefit private interests more than incidentally; the distinction is that you provide employment opportunities to individuals who have received training from Instructor, rather than trained individuals to a particular class of employers. In addition, you provide advertising for Instructor and Consulting Company on your website. Thus, your operations substantially benefit Instructor.

Because your operations substantially benefit your members, your directors, and Instructor, you have not demonstrated that your operations serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Section 501(q) of the Code

An organization that provides educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. An organization that engages in such activities as a substantial purpose must, in addition to complying with the requirements

of section 501(c)(3), comply with the provisions of section 501(q). You do not meet the requirements of section 501(c)(3) and you do not meet the requirements of section 501(q).

An exempt credit counseling organization must establish and implement a fee policy which requires that any fees charged to a consumer for services are reasonable and allows for the waiver of fees if the consumer is unable to pay. Section 501(q)(1)(C). You failed to establish that you have such a fee policy.

Credit counseling organizations must be governed by a board controlled by persons representing the broad interests of the public rather than by persons who benefit from the organization's activities. Section 501(q)(1)(D) of the Code. All of the voting power of your board is vested in persons who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates) through referrals from the organization and fees from members of the organization. Accordingly, you do not have a board that is controlled by persons who represent the broad interests of the public as required by section 501(q)(1)(D)(i). You also fail to meet the requirements of sections 501(q)(1)(D)(ii) and (iii), which generally specify the percent of voting power that is allowed to be vested in financially interested persons.

Credit counseling organizations are not allowed to receive payments for providing referrals to others for services related to the repayment, consolidation, or restructuring of a consumer's debt, which includes the negotiation with creditors of lower interest rates or the waiver or reduction of fees. Sections 501(q)(1)(F) and 501(q)(4)(B) of the Code. You receive a referral fee for providing referrals to your members for loan modification, short sales, partial claims, deed in lieu of foreclosure, and forbearance plan services. Therefore, you do not satisfy the requirement that you receive no amount for providing referrals to others for debt management plan services.

Therefore, had you established that you otherwise met the requirements of section 501(c)(3) of the Code, your failure to satisfy the requirements of section 501(q) would prevent you from being exempt from taxation under section 501(a).

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes as required by sections 1.501(c)(3)-1(b)(1)(i), 1.501(c)(3)-1(a)(1), and 1.501(c)(3)-1(c)(1) of the regulations. You are organized and operated for a substantial nonexempt purpose in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. Any public purposes for which you may operate are only incidental to your primary nonexempt purpose. You have not demonstrated that you do not allow your net earnings to inure to private individuals as required by section 1.501(c)(3)-1(c)(2) of the regulations. You do not serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Therefore, you are not described in section 501(c)(3) of the Code. In addition, you do not meet the requirements of section 501(q).

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements